IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 340 OF 2003

Shri Anant Venkatesh Naik,
major in age, Indian
National, r/o Yeshwantnagar,
Ponda, Goa. ... Petitioner.

Versus

Shri Dharmu Govind Naik,
major in age, Indian National,
r/o Dhavali, Ponda, Goa. ... Respondent.

Shri N. K. Sawaikar, advocate for the petitioner.

Shri U. S. Kolwalkar, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 24th July, 2003.

ORAL JUDGMENT

Rule. Respondents waive service, Heard forthwith.

In the instant case the respondent has completed his evidence. The petitioner filed his evidence by way of examination-in-chief on affidavit. It transpires that the petitioner herein was relying upon a document prepared by a Surveyor and the matter came to be adjourned on the ground that the Surveyor was not available at that time and, consequently, the petitioner could not step into the witness box to prove the documents on which he was relying. The petitioner was otherwise present in the Court. An application for adjournment for the very same reason was sought on the aforesaid day, but the trial Court by its Order dated on 19th April, 2003, rejected the same on the ground that three opportunities after the hearing had already been given to the defendant and thus closed the

evidence. An application was made for recalling the order which was dismissed by the impugned Order dted 21st June, 2003. It is this Order which is the subject-matter of the present petition.

On the other hand, on behalf of the respondent learned counsel contends that the trial Court considering the provisions of Order 17 Rule 1 of the C.P.C. has rightly exercised its jurisdiction. Once that be the case there is no error apparent committed by the trial Court and, consequently, no interference is called for.

2. The learned trial Judge has proceeded only on the footing that he has no jurisdiction to grant more than three adjournments to a party after hearing his evidence. In my opinion, Order 17 Rule 1, including the proviso, has to be read as directory and not imperative thereby giving jurisdiction to the Court to grant adjournment in cases of palpable injustice and once that be the case, it was within the jurisdiction of the trial Court to grant adjournments if the trial Court in the justice of the matter, thought it fit to do so and the application for adjournment on the part of the petitioner was not merely a ruse to further adjourn the proceedings.

In the instant case, the the evidence by way of examination-in-chief, was filed on affidavit. The

petitioner did not have with him the documents which he was seeking to rely upon for the purpose of proving encroachment and it is in these circumstances the affidavit sought to be relied upon by the petitioner could not be proved through his witnesses. In my opinion, therefore, this would have been a fit case where the trial Court could have exercised jurisdiction. The learned trial Judge proceeded on the footing that he had no jurisdiction. That amounts to an error apparent on the face of the record and, consequently, the impugned Order dated 21st June, 2003 is quashed and set side but with the following directions:-

(i) The petitioner, as a condition precedent, to pay costs quantified at Rs.1,000/- (rupees one thousand only) to the respondent within four weeks from today;

(ii) The parties to appear before the trial Court on 5th August, 2003, at 10.30 a.m. On that date, the trial Court to fix a date to enable the petitioner to produce his documents and, thereafter permit the respondent herein to cross-examine the witness and thereafter proceed according to law.

On behalf of the petitioner, learned counsel makes a statement that the petitioner would ordinarily not seek adjournment so as to enable the suit to be disposed of at the earliest.

Rule made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

F. I. REBELLO, J.

mc.